EX PARTE OR LATE FILED

1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

DOCKET FILE COPY ORIGINAL

RECEIVED

NOV 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 14, 1997

Magalie Salas, Esq.
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Ex Parte Communications in IB Docket No. 97-142

Dear Ms. Salas:

On November 13, 1997, John R. Hoffman, Jr., Esq., Jay Keithley, Esq., Leon Kestenbaum, Esq. and Kent Nakamura, Esq. of Sprint Corporation met with Katie King, Esq. and Commissioner Harold Furchtgott-Roth, with Ari Fitzgerald, Esq. of Chairman Kennard's office, and with David Siddall, Esq. of Commissioner Susan Ness's office. The substance of our conversations is fully reflected in the pleadings which Sprint has previously filed with the Commission in this docket and in IB Docket No. 96-261. This letter is being filed on the day after our meetings because the meetings ended late in the afternoon.

Should you have any questions, please do not hesitate to contact the undersigned at (202) 857-1030.

Sincerely yours,

Kent Y. Nakamura
General Attorney

cc: The Hon. Harold Furchtgott-Roth
Ari Fitzgerald, Esq.
Katie King, Esq.
David Siddall, Esq.

No. of Copies rec'd 0+1

LORAL
Space & Communications Ltd.

1755 Jefferson Davis Hwy.
Suite 1007
Arlington, VA 22202-3501
(703) 414-1057
Fax: (703) 414-1079

Laurence D. Atlas
Vice President,
Government Relations
Telecommunications

November 14, 1997

By Hand

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: ***Ex Parte*** **Presentation in IB Docket No. 96-111**
Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States

Dear Ms. Salas:

I met with today with Commissioner Ness and David Siddall to discuss Loral's comments in the above-captioned proceeding. I also had a separate meeting with Avi Fitzgerald of Chairman Kennard's office on the same subject matter. Enclosed are copies of materials presented at those meetings.

Respectfully submitted,

Laurence D. Atlas

cc: (w/enclosures)
Commissioner Susan Ness
David Siddall
Avi Fitzgerald

DISCO II ISSUES

1. The Commission should adopt the general open market framework proposed in the FNPRM.

2. The Commission should seek further comment before establishing a market entry test for affiliates of Intergovernmental Satellite Organizations (IGOs).

3. There is no legal or policy rationale for treating IGO affiliates differently based on their date of incorporation.

4. The Commission should not reverse the successful deregulatory policy of DISCO I by imposing ECO-Sat on U.S. licensees seeking to serve non-WTO route markets.

5. Terms and conditions imposed on foreign licensed satellites should be equivalent to those imposed on U.S. licensees.

1. The Commission Should Adopt the General Open Market Framework Proposed in the FNPRM

ECO-SAT test should not be applied to satellites licensed by WTO members providing covered services.

ECO-SAT test should be applied to non-WTO members, non-covered services, and inter-governmental organizations.

ECO-SAT test should not be applied to non-WTO route markets served by WTO member satellites

- Under national treatment principle, applying ECO-SAT test in such circumstances might require US satellite systems to obtain US authorization to serve such routes. This would disadvantage US satellite interests and retard global competition.

2. The Commission Should Seek Further Comment Before Establishing Market Entry Policies For IGO Affiliates

The FCC and GAO have repeatedly highlighted the threat to competition posed by the unique relationships between IGOs (Intelsat and Inmarsat), IGO signatories, and IGO affiliates. Issues include:

- IGO-affiliate cross-subsidies, IGO-affiliate asset transfers, privileged access to markets offered by signatories, and exclusive financial benefits to affiliates from their unique relationships with IGOs, former IGOs and IGO signatories.

- These and other complex issues re IGO affiliate entry policies should be addressed separately based on a full and adequate record.

- Neither IGOs nor affiliates are WTO members and there is thus no need to determine IGO affiliate entry policies by 1/1/98.

- The standard set out in the FNPRM ("significant risk to competition") provides no advance guidance on the nuts and bolts issues of privatization.

- Privatization efforts are currently ongoing. Unless FCC provides advance guidance, it will be presented with a completed restructuring that it must approve or reject. Conditioning licenses on further restructuring will not be a viable alternative.

- On the domestic side, FCC has conducted rulemakings to give guidance in similar circumstances (separate affiliate safeguards under Section 272, manufacturing under Section 273).

Difficult issues on which the record needs development include:

- Should an IGO affiliate be deemed a "company of" a WTO member? If so, for what reasons? Under what criteria? If an "affiliate" that is 100 percent owned by an IGO is incorporated in a WTO country, can it be a "company of" that WTO member?

- What level of ownership or investment (if any) in affiliates by IGOs, IGO signatories or IGO predecessors is *per se* anticompetitive? What level of ownership is *de minimis* and raises no competition concerns?

- To what extent must an affiliate be operationally independent (common employees, common directors, other residual links with IGO, privileges and immunities)?

- How can the FCC ensure that dealings between an affiliate and IGO are at arm's-length?

- Which IGO assets may be transferred to the affiliate in non-market transactions without unduly affecting competition?

3. The Commission Should Treat All IGO Affiliates In The Same Fashion

Neither the Commission nor any commenter has offered any rationale for distinguishing "existing" IGO affiliates from "future" affiliates:

- The Commission, without offering an explanation or rationale, draws a distinction between "future" affiliates and IGO affiliates that have already incorporated.

- This distinction is without legal support and could lead to undesirable and unintended results. The principles embodied in the WTO Agreement suggest that if the U.S. extends WTO privileges to one IGO affiliate it would have to extend the same privileges to all other IGO affiliates.

- It would violate the Administrative Procedure Act to accord different treatment to various IGO affiliates based on date of incorporation, especially since other types of entities are not treated differently based on their date of incorporation.

- The potential for anti-competitive effects depends on the structure of IGO affiliate and its relationship to the IGO, not on the date the IGO affiliate is created.

4. The Commission Should Not Reverse the Successful Flexible Policy Of DISCO I By Imposing ECO-Sat On U.S. Licensees Seeking To Serve Non-WTO Route Markets

- To do so would unnecessarily burden U.S. licensees and reverse the effective deregulatory regime of DISCO I which allows U.S. licensees to serve any foreign country provided that requisite foreign approvals are secured.

- Nothing in the WTO, including national treatment, requires this burdensome approach.

- Competitive concerns regarding non-WTO routes are better addressed by extending the prohibition on exclusive arrangements to non-U.S. licensees desiring to enter the U.S. market.

5. Terms And Conditions Imposed On Foreign Licensed Satellites Should Be Equivalent to Those Imposed On U.S. Licensees

- For example, foreign licensees should be subject (where applicable) to:
  - -- terrestrial relocation costs
  - -- construction milestones
  - -- universal service obligations